

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES  
DIVISION OF PUBLIC ASSISTANCE

SARAH PALIN, GOVERNOR

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July 17, 2009

[REDACTED]

Re: OHA #09-FH-155  
Program Type: Food Stamps  
Agency case # [REDACTED]

Dear [REDACTED]:

This letter is in response to your request for a Director's review of your June 18, 2009 fair hearing decision regarding your eligibility to participate in the Food Stamp Program. Your appeal was received in my office by email on June 20, 2009.

At issue is whether you were eligible for the Food Stamp Program while you had an outstanding arrest warrant in the State of Washington.

As outlined in the Hearing Authority's decision, federal rules governing eligibility for the Food Stamp Program do not allow a person who is fleeing prosecution of a felony crime to qualify for the program. Evidence presented during the fair hearing demonstrated that you had an outstanding arrest warrant for a felony charge in the State of Washington when you applied for assistance on February 24, 2009. While you were working with your attorney on getting the felony charge dismissed, changed to a misdemeanor, or the arrest warrant quashed, and you subsequently provided evidence that shows your criminal charges were dismissed on June 22, 2009, the fact remains an active bench warrant for your arrest was in place when you applied for the Food Stamp Program on February 24, 2009 and at the time the Hearing Authority issued its decision on June 18<sup>th</sup>, 2009. Under the federal food stamp program rules, you were considered to be "fleeing prosecution for a felony crime" until such time as your charges were dismissed on June 22, 2009, and consequently ineligible to participate in the Food Stamp Program. Therefore, I am upholding the Hearing Authority's decision that our agency was correct to deny your February 24, 2009 application for the Food Stamp Program.

This decision has been reached based upon a review of the hearing record, fair hearing exhibits, the Hearing Authority's decision, and applicable laws and regulations. If for any reason you are not satisfied with this decision, you may appeal to the Superior Court within 30 days.

Sincerely,

Ellie Fitzjarrald  
Director

cc: Patricia Huna-Jines, Hearing Authority  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Fair Hearing Representative

Office of Hearings and Appeals  
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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED] )  
 Claimant. )  
 )  
 \_\_\_\_\_ ) OHA Case No. 09-FH-155  
 Division Case No. [REDACTED]

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

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[REDACTED] (Claimant) applied for Food Stamp benefits through the Division of Public Assistance (Division) on February 24, 2009. (Ex. 2.0). On March 4, 2009, the Division sent Claimant notice his Food Stamp benefits were denied. On March 9, 2009, the Claimant telephonically requested a fair hearing to contest the Division's denial of his Food Stamp Application. (Ex. 3). This office has jurisdiction of the Claimant's appeal pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a fair hearing was held on April 15, 2009. The Claimant attended the hearing in person, representing and testifying for himself. [REDACTED], Public Assistance Analyst, appeared in person, representing and testifying for the Division.

**ISSUE**

The Division argues it can deny benefits to any applicant who is fleeing prosecution, even if the crime is not a felony. The Division also argues it had sufficient evidence to prove Claimant is fleeing from a crime committed in Washington State.

The Claimant argues he was never issued a warrant and the Division does not have sufficient evidence to demonstrate an active warrant exists.

There are two issues to be determined:

Can the Division deny an Applicant Food Stamp benefits if he is fleeing prosecution of a crime, if that crime is not a felony?

Was the Division correct to deny Claimant's February 24, 2009 Application for Food Stamp benefits based on the information they had regarding a warrant issued from [REDACTED]

### **FINDINGS OF FACT**

The following facts were established by a preponderance of the evidence:

1. On February 24, 2009, Claimant signed and submitted an Application for Food Stamp benefits to the Division. (Ex. 2). On page two of the Application, the following question was asked: "Is any adult in your household fleeing from prosecution, custody, confinement for a felony or class A misdemeanor from any state?" (Ex. 2.1) The Claimant responded in the negative. (Ex. 2.1)

2. With the Application, Claimant also submitted a document from the Federal Social Security Administration. (Ex. 2.10) That document stated the Social Security Administration was denying Claimant's Supplemental Security Income payment because he had an outstanding arrest warrant for "a crime which is a felony (or, in jurisdictions that do not define crimes as felonies, a crime that is punishable by death or imprisonment for a term exceeding 1 year), or who have violated a condition of probation or parole under Federal or State law." (Ex. 2.10). The document further states:

Our records show that the [REDACTED] SHERIFFS OFFICE, . . . issued a warrant for your arrest for a nonviolent and nondrug-related crime on [REDACTED]

The warrant information we have is:

Warrant number [REDACTED]

Originating case number: [REDACTED]

National Crime Information Center number: [REDACTED]

(Ex. 2.10).

3. On March 3, 2009, Division personnel telephoned the [REDACTED] Sheriff's Office. (Ex. 3) The Sheriff's Office told the Division the crime was not drug related and suggested calling the Superior Court. (Ex. 3). Division personnel then called the Superior Court, who informed Division personnel the warrant was still active and the Claimant would have to schedule a hearing to have the warrant quashed. (Ex. 3).

4. On March 4, 2009, the Division sent notice to the Claimant that his Food Stamp Application was denied because he is a fleeing felon. (Ex. 4).

5. Claimant testified he was never issued a warrant and the Division does not have sufficient evidence to demonstrate an active warrant exists. However, he testified he was aware of the warrant when he applied for Food Stamps.

6. After the fair hearing, Claimant submitted documents indicating he was involved in a crime in Seattle, Washington:<sup>1</sup>

a. A letter, from what appears to be Claimant's attorney in the State of [REDACTED] written to the county prosecutor states the Claimant was involved in a [REDACTED] crime for possession of marijuana. (Ex. A) On [REDACTED] while going through customs, he was searched and suspected marijuana seeds were found. (Ex. A-1). The letter indicates he was not immediately charged, however, the seeds were grown to maturity. (Ex. A-2) A year later, after the seeds had grown to a marijuana plant, he was charged with a crime. (Ex. A-2) The case is currently on bench warrant status. (Ex. A-1) The letter cites to case number [REDACTED], which is the same number the Social Security Administration cites. (Ex. A-1). The letter requests that the prosecutor: 1) dismiss it; 2) offer a misdemeanor; and/or 3) agree to a bench warrant quash.

b. Further documentation supplied by the Claimant states the [REDACTED] Police destroyed evidence in [REDACTED] to a crime involving Claimant. (Ex. F-2). According to the documents, the evidence consisted of: a bag containing seeds which were suspected of being marijuana; a coat containing some seeds; and a book with a marijuana leaf inside. (Ex. F-2). Documents for the [REDACTED] Police indicate the case number is [REDACTED]. (Ex. D – F).

#### PRINCIPLES OF LAW

"Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com'n*, 711 P.2d 1170, 1183 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69, P.3d 489, 493 (Alaska 2003).

The Code of Federal Regulation 7 CFR 273.1(b)(7)(ix) states the following persons are not eligible to participate as separate households in the Food Stamp program: "Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole who are ineligible under §273.11(n)."

7 CFR 273.11(n) states:

Individuals who are **fleeing to avoid prosecution or custody for a crime**, or an attempt to commit a crime, **that would be classified as a felony** (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered

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<sup>1</sup> Despite the fact the record had closed, the Division did not object to the submission of this additional evidence. (April 15, 2009 letter and April 21, 2009 e-mail message from Terri Gagne). Therefore, the record was reopened and the documents were admitted. These new exhibits have been marked and are enclosed with this decision for the parties.

eligible household members. The income and resources of the ineligible member shall be handled in accordance with (c)(1) of this section.

(emphasis added)

7 U.S.C. § 2015(k) states a household member in the Food Stamp Program cannot be:

**(A)** fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the individual is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

**(B)** violating a condition of probation or parole imposed under a Federal or State law.

### ANALYSIS

The first issue is whether the Division can deny Food Stamp benefits to a person fleeing prosecution of a crime if that crime is not a felony. The next issue is whether the Division was correct to deny Claimant's February 24, 2009 Application for Food Stamp benefits based on the information they had regarding a warrant issued from [REDACTED]. Since Claimant is the party wishing to change the status quo, he has the burden of proof by a preponderance of the evidence.

#### Fleeing Felon

The Division's position that an individual fleeing prosecution of a crime is not eligible for Food Stamps, even if the crime is not a felony, presents a legal issue which requires a careful review of the relevant regulation. The Division has argued that 7 CFR 273.1(b)(7)(ix) states any person fleeing prosecution of any crime (felony or misdemeanor) is not eligible for Food Stamp benefits. This regulation states: "Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole who are ineligible under §273.11(n)." Thus, it is critical to determine the relationship between 7 CFR 273.1(b)(7)(ix) and 7 CFR 273.11(n).

7 CFR 273.11(n) states:

*Fleeing felons and probation or parole violators.* Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, **that would be classified as a felony** (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members.

(emphasis added)

The Division argues 7 CFR 273.11(n) is a separate independent condition in the Food Stamp regulations, as opposed to a further condition of 7 CFR 273.1(b)(7)(ix). Accordingly, the Division argues pursuant to 7 CFR 273.1(b)(7)(ix), an individual can be denied benefits for merely fleeing prosecution of any crime, even if that crime is not a felony. A careful review of 7

CFR 273.1(b)(7), however, demonstrates 7 CFR 273.11(n) is a further condition of 7 CFR 273.1(b)(7)(ix).

The critical words of subparagraph (ix) are: “individuals. . . who are ineligible under §273.11(n).” The phrase at the beginning of the subparagraph, “who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole” is describing general disqualifying conditions for the Food Stamp Program. The ending words, “who are ineligible under §273.11(n),” describes with further specificity the disqualifying condition or circumstance. Thus, the first regulation, 7 CFR 273.1(b)(7)(ix), requires the described individuals also be not be eligible for Food Stamps under 7 CFR 273.11(n). In other words, individuals meeting the description in 7 CFR 273.1(b)(7)(ix) must also not be eligible for Food Stamps under § 273.11(n).

The above interpretation that § 273.11(n) is a further condition of 7 CFR 273.1(b)(7)(ix) is consistent with other subparagraphs under §273.1(b)(7) which is titled “Ineligible household members. “The following persons are not eligible to participate as separate households or as a member of any household.” Subparagraphs (i) through (x) within subsection (b)(7) set for the a list of different circumstances that make individuals not eligible for Food Stamps.

The subparagraphs within §273.1(b)(7) provide a brief description of the disqualifier or disqualifying condition or circumstance and then refer to an additional regulation that describes with further specificity the disqualifying condition or circumstance. An example is subparagraph (i) in §273(b)(7) which states: “Ineligible aliens and students as specified in §273.4 and §273.5.” The words “ineligible aliens and students” is a general description of the disqualifying condition. The specific disqualifying conditions are described in §273.4 and §273.5, which are set forth in several pages.

The following are additional examples of individuals, generally disqualified from receiving Food Stamp benefits pursuant to section 273(b)(7):

- (ii) SSI recipients in “cash-out” States as specified in section 273.20;
- (iii) Individuals disqualified for non-compliance with the work requirements of section 273.7;
- (iv) Individuals disqualified for failure to provide an SSN as specified in section 273.6;
- (v) Individuals disqualified for an intentional Program violation as specified in section 273.16;
- (viii) At state agency option, individuals who are disqualified in another assistance program in accordance with section 273.11(k);
- (x) Individuals disqualified for failure to cooperate with child support enforcement agencies in accordance with section 273.11(o) or (p), or for being delinquent in any court-ordered child support obligation in accordance with section 273.11(q).

Another example is subparagraph (vii) of §273(b)(7), which states: “Individuals who are ineligible under §273.11(n) because of drug-related felony conviction.” Again, the specific disqualifying condition is articulated in 273.11(n). The general disqualification is “drug-related felony conviction.”

If 7 CFR 273.1(b)(7)(ix) is interpreted as described above, then the reading of §273.11(n) and §273.1(b)(7)(ix) would be internally cohesive and consistent with the rest of subsection (b)(7).

The above interpretation that 7 CFR 273.11(n) is a further condition of 7 CFR 273.1(b)(7)(ix), and as a consequence that an individual must be a fleeing felon to be disqualified from Food Stamp benefits is also consistent with the Federal statute which ultimately governs the Food Stamp Program. 7 U.S.C. §2015(k) explicitly states a person who is fleeing prosecution of a felony crime is not eligible for the Food Stamp Program. The code provision specifically requires the crime to be a felony. Therefore, 7 CFR 273.1(b)(7)(ix) requires the disqualifying condition under the Food Stamp Program to be that a person is a fleeing a felony crime, not merely a person fleeing prosecution from any crime.<sup>2</sup>

#### Division Evidence on Whether There Was a Warrant

The Division argues it has submitted sufficient evidence to prove Claimant is a fleeing felon. The Division submitted a letter from the Social Security Administration stating the Claimant is a fleeing felon. The document gives very little information regarding the crime but does state: “the law prohibits us from paying Supplemental Security Income to individuals who have an outstanding arrest warrant for a crime which is a felony...” and identifies the warrant number, originating case number and National Crime Information Center number.

The Division also presents file notes made by its’ personnel regarding telephone conversations with the ██████████ Sheriff’s Office and the Superior Court in ██████████. However, these notes do not indicate who Division personnel talked to at the Superior Court in ██████████, and whether that person is qualified to make a proper assessment of the provided information. More important, there are no notes in the file regarding these two contacts (Superior Court and Sheriff’s Office) confirming the crime was a felony.

Claimant submitted information which supplemented the above evidence. In particular the Claimant’s attorney drafted a letter addressed to the county prosecutor regarding the pending case and states in the first paragraph “[i]t is currently on bench warrant status.” The letter requests the case be dismissed. If the case is not dismissed, the letter requests that the Claimant be offered a misdemeanor, and/or agree to quash the bench warrant. (Ex. A-1) The letter contained the same case number as in the Social Security letter (██████████). By requesting that the prosecutor offer a misdemeanor, there is an inference the underlying crime is a felony. By requesting an agreement to quash the bench warrant, it follows the felony crime is the subject of an outstanding warrant. Moreover, during the hearing Claimant also admitted that he knew of the warrant and the letter explicitly stated the case was “on bench warrant status.”

The Social Security Administration letter, the responses from the ██████████ Sheriff’s Office, and the Superior Court system in ██████████, and the statements from the Claimant’s attorney are all circumstantial evidence indicating Claimant is a fleeing felon. Claimant has not submitted any evidence to the contrary. Claimant has the burden to prove by a preponderance of the evidence that he is not a fleeing felon. He has failed to do so.

#### CONCLUSIONS OF LAW

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<sup>2</sup> Since the issue in this case is regarding a person who has not been prosecuted, the remainder of the conditions in 273.11(n) and 273.1(b)(7)(ix), violating a condition of probation or parole, will not be addressed.



1. Pursuant to Federal regulation 7 CFR 273.1(b)(7)(ix), the Division can only deny an Applicant Food Stamp benefits for fleeing prosecution of a crime if that crime is a felony.
2. The Claimant has failed to meet his burden of proof and prove by a preponderance of the evidence that he is not a fleeing felon.

### **DECISION**

The Division's denial of the Claimant's February 24, 2009 Application for Food Stamp benefits is affirmed.

### **APPEAL RIGHTS**

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance  
Department of Health and Social Services  
P.O. Box 110640  
Juneau, Alaska 99811-0640

An appeal request must be sent within fifteen (15) days from the date of receipt of this decision.  
Filing an appeal with the Director could result in the reversal of this decision.

DATED this \_\_\_\_\_ day of June, 2009.

Patricia Huna-Jines  
Hearing Authority

### CERTIFICATE OF SERVICE

I certify that on this \_\_\_ day of June, 2009, true and correct copies of the foregoing document were sent to the Claimant via certified mail, return receipt requested, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.  
[REDACTED], Director  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
Office of Fair Hearing Representative  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

\_\_\_\_\_  
Al Levitre  
Law Office Assistant I

